Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1976.

No. 76-1224

A. STUCKI COMPANY, a Corporation,
Petitioner,

v.

RAILROAD DYNAMICS, INC., a Corporation,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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REASONS FOR DENYING THE WRIT.

I. There Is No Conflict Between the Decision Below and Decisions of This Honorable Court or Other Federal Courts as to Whether a Corporation Is a Resident of Its Entire State of Incorporation for the Purposes of Section 1400(b).

Petitioner apparently does not recognize that *Stonite Products Company v. Melvin Lloyd Company,* 315 U. S. 561, 86 L. Ed. 1026, 62 S. Ct. 780 (1942) and *Fourco Glass Company v. Transmirra Products Corporation,* 353 U. S. 222, 1 L. Ed 2d 786, 77 S. Ct. 787 (1957) were decisions of limitation. Contrary to Petitioner's contention, the principle stated by this Court, and restated in all the cases collected at page 6 of the Petition, is that for purposes of Section 1400(b) a corporation cannot "reside" *outside* its state of incorporation. Indeed, *Sterling Manufacturing Company v. Radio Shack,* 364 F. Supp. 1068 (N. D. Ohio 1973), relied on by Petitioner, expressed it well at 1069:

> "The residence test of venue limits the residence of a corporation to its state of incorporation."

There is no conflict whatsoever between the decision below and those of this Court or any other federal court, for in defining the outer limits of venue, it has nowhere been held, stated or even implied that this outer boundary was also the *internal* one, and that venue would lie in the entire state of incorporation. To the contrary, the courts have repeatedly held, as in *Lindly & Co. v. Karl H. Inderfurth Co.,* 190 F. Supp. 875, 877 (E. D. N. C. 1961), that "a corporation 'resides' within the meaning of that term as used in § 1400(b) in the judicial district where its principal place of business is located".

II. Congress Did Not Intend Uniformity of Interpretation Between Sections 1400(b) and 1391(c), the Patent Venue Statute Being Exclusive, Restrictive and Not to Be Supplemented by Any General Venue Provisions.

In *Stonite Products Company, supra,* this Court held that the patent venue statute, then 29 Stat. 695 (1897), was not only exclusive, but was not to be supplemented by general venue provisions, because Congress did not intend the patent venue statute "to dovetail with the general provisions relating to the venue of civil suits, but rather that it alone should control venue in patent infringement proceedings", that it was "a restrictive measure limiting a prior, broader venue". (315 U. S. at 566-67).

In *Fourco Glass Company, supra,* this Court found that in revising the Judicial Code Congress intended to make no substantive change in the patent venue statute, and rejected what is in substance the same position advanced by Petitioner. The Court of Appeals had held that proper construction of § 1400(b) required the insertion in § 1400(b) of the definition of corporate residence from § 1391(c) and that the two sections should be read together. Petitioner attempts to distinguish its argument by basing it upon a metaphysical "presence" in all districts of a corporation's state of incorporation, rather than on the "doing of business". This is a distinction without a difference, for Section 1391(c) is a general venue statute and *no provision* thereof may be used to supplement the special patent venue statute which is separate, specific and exclusive. As this Court restated in *Schnell v. Eckrich & Sons, Inc.,* 365 U. S. 260, 5 L. Ed. 2d 546, 81 S. Ct. 557 (1961):

> "The language of this special statute is clear and specific . . . . [A]nd for us to enlarge upon the mandate of the Congress as to venue in such patent actions would be an intrusion into the legislative field.
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> . . . [It is] not one of those vague principles, which, in the interest of some overriding policy, is to be given a 'liberal' construction." (365 U. S. at 263-64).

In the circumstances the decision below cannot possibly conflict with interpretations of "similar" language in Section 1391(c), for the alleged similarity is totally irrelevant.

Brunette Machine Works, Ltd. v. Kockum Industries, Inc., 406 U. S. 706, 32 L. Ed. 2d 428, 92 S. Ct. 1936 (1972), is relied upon heavily by Petitioner, but neither the facts, nor the reasoning therein, nor any of the principles enunciated, have any bearing whatsoever on the question now before this Court. *Brunette,* a case of alien infringement, is in a class of its own. Resort to Section 1391(d) was not a supplement by a general venue provision as prohibited by *Stonite Products* and *Fourco Glass.* Speaking for this Court, Mr. Justice Marshall held:

> "For 1391(d) is properly regarded, not as a venue restriction at all, but rather as a declaration of the long-established rule that *suits against aliens are wholly outside the operation of all the federal venue laws, general and special.*" (406 U. S. at 714) (emphasis additional)

III. A United States Corporation Always Has a "Residence" for the Purposes of Section 1400(b), and Any "Gap" in Venue on That Basis Is Purely Illusory.

Petitioner creates a confusion and a potential for disharmony where none exist. In the light of *Stonite*

Products and *Fourco Glass,* the decision below will not support any reasonable interpretation other than that for purposes of Section 1400(b) a corporation "resides" in the following districts: (a) that one district within its state of incorporation in which its principal place of business is located, and (b) a district in any state where the defendant has a regular and established place of business and has committed acts of infringement.

Petitioner poses a hypothetical situation in which an alleged infringer is incorporated in a multi-district state, has its principal place of business in a second state, and has, moreover, no regular and established place of business in the district of infringement, which might be another district of the second, or possibly a third state. It is suggested that in such a case the "residence" basis for venue under Section 1400(b) could be foreclosed completely, and that possibly no district would exist in which venue would be proper. Such speculation is both absurd and unwarranted, for within the provisions of Section 1400(b), as interpreted by the courts, there is always at least one easily ascertainable judicial district in which a United States corporation is amenable to suit. In the absence of a principal place of business, the District Court in *Hydro-Clear Corporation v. Aer-O-Flo Corporation,* 317 F. Supp. 1317 (N. D. Ohio 1970), experienced no confusion or difficulty in locating the defendant's residence *where the defendant itself had placed it,* pursuant to applicable state law, specifically, in that district wherein resided its designated agent. This alternative is so eminently reasonable, realistic, fair and simple, that it is difficult to understand how the Petitioner could dismiss *Hydro-Clear* as "error" and "inapposite".

Respondent can find no cases in conflict or applying a different principle, and submits that the federal courts are

well able to deal with such problems when and as they arise.

IV. The Decision Below Properly Construes and Applies a Federal Statute and Cannot Therefore Improperly Prejudice Rights Conferred by Other Federal Legislation.

There is no dispute that the provisions of the patent venue statute are more restrictive than those of general venue, and more inconvenient for a plaintiff. In asserting, however, that such disadvantage "improperly prejudices" rights conferred by federal legislation, Petitioner ignores the fact that Section 1400(b) is *also* federal legislation, and as much an expression of congressional will and intent as are those other rights for which protection is sought. The patent venue statute is not a mere rule of procedure, to be judicially "adjusted" or subordinated to superior substantive rights. Any "prejudice" it may create is not the result of judicial interpretation but by legislative mandate, and as such, hardly "improper". See *Schnell v. Eckrich & Sons, Inc., supra,* at 263-64.

Petitioner admits that even if enacted into law, the Resolution of the American Bar Association, quoted at 14, note 7 of the Petition, would not resolve the question to its satisfaction. The Resolution might indicate some dissatisfaction with the patent venue statute, but it also clearly recognizes and acknowledges that it has thus far been accurately construed, and that the only proper remedy would be by congressional amendment.

CONCLUSION.

For these reasons a Writ of Certiorari to review the Judgment Order of the Third Circuit should be denied.

Respectfully submitted,

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